IN THE HIGH COURT OF BOMBAY AT GOA
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FIRST APPEAL NO. 2 OF 2002

Vinayak Naik, s/o Venktesh
Naik, major in age, bachelor,
r/o c/o Nilkhant Dessai,
House No.138, Alto Rumda
Wada, Near Ganpati Temple,
Jetty, Mormugo Harbour 403 803 ... Appellant.

Versus

1. Rosario Fernandes, s/o
Joaquim Fernandes, driver
of vehicle bearing registra-
tion no. GA-02-T-7777, r/o
House No.158, Arlem, Raia,
Salcete, Goa,

2. Nicolao Gaonkar, s/o
Francisco Gaonkar, owner
of vehicle bearing
registration no. GA-02-T-7777,
r/o House No.58, Arlem, Raia,
Salcete, Goa, and

3. United India Insurance Company
Ltd., insurer of vehicle
bearing registration
no.GA-02-T-7777, Damodar
Chambers, 2nd Floor, Cunha
de Silver Rd., P.O. Box
No.185, Panaji, Goa 403 001. ... Respondents.

Shri S. S. Kakodkar, advocate for the appellant.

Shri S. A. Samant, advocate for respondent nos. 1 and 2.

CORAM : F. I. REBELLO, J.

DATE : 11th July, 2003.

ORAL JUDGMENT

The appellant had filed a claim petition which came to be partly allowed by Award dated 20th October, 2001. The Tribunal allowed compensation of Rs.29,000/- and interest at 9% from the date of the petition until payment and also costs of Rs.2,000/- and Rs.2,000/- by way of advocate's fees.

2. The appellant herein had filed the claim petition. It was his contention that on 26th March, 1995, the petitioner was riding scooter no. GA-02-C-0715 and was proceeding towards Margao from Vasco da Gama. At a place called Nuvem, on the Margao-Cortalim road, vehicle bearing no. GA-02-T-7777, driven rashly and negligently came to the wrong side and dashed against the scooter driven by the applicant, as a result of which the appellant sustained injuries.

Respondents, including the Insurance Company, filed a joint written statement denying the averments, as contended on behalf of the appellant and also denying that the appellant was entitled to any compensation.

3. Based on the pleadings the learned Presiding Officer of the Claims Tribunal framed various issues of which issue no.1 was whether the accident took place due to the rash and negligent driving of the vehicle driven by respondent no.1. The Tribunal held in the affirmative. The respondents have not challenged the said finding or the amount as awarded. It would, therefore, not be necessary to go into that aspect of the matter. On the issue whether the respondent no.1 did not have a valid driving licence, the learned Presiding Officer of the Claims Tribunal held against the Insurance Company and in favour of respondent no.1. The Insurance Company has not come in appeal and consequently, also, that question does not arise.

The real issue is whether the appellant is entitled to any higher compensation than awarded by the Claims Tribunal. The issues pertaining to compensation were issue nos.2, 3 and 5. the Claims Tribunal held from the evidence of Dr. Sham Talwadkar, C.W.4, that the appellant had a crushed injury on the right finger. The permanent disability was assessed at 12%. Then, considering issues no.3 to 5, the Claims Tribunal awarded for medicines and medical treatment, Rs.430/-; for repairs of the scooter Rs.320/-; for loss of wages for one month on notional basis, Rs.1,250/-; for pain and suffering, Rs.15,000/- and for permanent disability, Rs.12,000/-. It is this finding which is the subject-matter of the present appeal.

4. At the hearing of this appeal on behalf of the appellant, it is contended that the appellant is precluded from the work which he was doing earlier and that the Presiding Officer also failed to consider that the injury would affect his functioning by way of writing and also in discharging his work of typing.

5. The main evidence on that count would be that of C.W.4, Dr. Sham Talwadkar. Dr. Talwadkar has set out that the x-ray showed a fracture of middle phalanx of the right index finger and based on this the disability was assessed at 12% of the indexed figure. In cross-examination he was asked whether he had asked the claimant to either type or write.

The witness answered that he had not done so. The witness further stated that the disability was based on the ALIMCO Manual. It is clear therefore that though there was a disability, there is nothing on record to show that the appellant is disabled from writing or typing. On compensation for loss of wages for one month the Tribunal did not accept the evidence led by the appellant herein on his income and considering the totality of the evidence, fixed notional income at Rs.1,250/-. In my opinion, there is no error in the findings recorded by the learned Claims Tribunal. In the light of that there is no merit in this Appeal which is accordingly rejected.

F. I. REBELLO, J.

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